Lien Hock Seng & Anor v Sakkarai a/l Mookiah & Anor

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO 12-122 OF 1995
ABDUL WAHAB J
29 APRIL 1997

Damages (Personal Injury or Death) *— Fatal accident — Appropriate multiplier — Claim for loss of support in respect of unmarried children — Whether multiplier in s 7(3)(iv)(d) of the Civil Law Act 1956 applicable — Whether likelihood of child marrying relevant — Civil Law Act 1956 s 7(3)(iv)(d)*

The appellants' children, Lien Choon Lai and his sister Kwee Bee, both 18 years old were killed in a road traffic accident. The appellants instituted this action for loss of support in respect of the deaths. The question of liability and damages was agreed upon by the parties. The only issue to be determined by the court was whether the multipliers of six and eight years respectively awarded by the sessions court was appropriate. In determining the multipliers, the sessions judge took into account that daughters in Asian families tended to marry earlier and sons may delay marriage in order to assist their families. The appellants contended that by virtue of s 7(3)(iv)(d) of the Civil Law Act 1956 ('the Act'), the appropriate multiplier should be 16.

Held, dismissing the appeal:

The loss of earnings of a deceased has been determined by the legislature to be calculated as per s 7(3)(iv)(d) of the Act. With regard to the period of loss of support from a child for his parents, Parliament has not determined clearly how the said period was to be calculated. This being so, the law as to calculation of the period of the loss of support remained as before the introduction of the amended s 7(3)(iv)(d) of the Act, namely, that the court would have to direct its mind to the likelihood of the child marrying in determining the multiplier to be applied (see pp 255I and 256A–B); *Chan Ching Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 followed.

Per curiam:

The decision in *Chan Ching Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 was consistent with the decisions in *Chang Chong Foo & Anor v Shivanathan* [1992] 2 MLJ 473 and *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42 with regard to the computation of the period of the loss of earnings, the latter two cases being concerned with the period of loss of earnings under s 28A(2)(c)(i) of the Act. However, the latter cases were not directly relevant to the issue at hand, namely, the computation of the period of loss of support (see p 256C).

[Bahasa Malaysia summary

Anak perayu-perayu, Lien Choon Lai dan adiknya Kwee Bee, kedua-duanya berumur 18 tahun telah terbunuh dalam suatu kemalangan jalan raya. Perayu-perayu memulakan tindakan ini untuk kehilangan penyara berkenaan dengan kematian tersebut. Persoalan liabiliti dan ganti rugi telah disetujui oleh pihak-pihak. Isu tunggal untuk ditentukan oleh mahkamah adalah sama ada multiplier enam dan lapan tahun masing-masing yang diawardkan oleh mahkamah sesyen adalah wajar. Dalam menentukan multiplier, hakim mahkamah sesyen telah mengambil kira bahawa anak perempuan dalam keluarga Asia biasanya berkahwin lebih awal dan anak lelaki boleh menundakan perkahwinan bagi membantu keluarga mereka. Perayu-perayu menghujahkan bahawa disebabkan s 7(3)(iv)(d) Akta Undang-Undang Sivil 1956 ('Akta tersebut'), multiplier yang wajar sepatutnya adalah 16.

Diputuskan, menolak rayuan:

Kehilangan pendapatan si mati telah pun ditentukan oleh perundangan supaya dikira mengikut s 7(3)(iv)(d) Akta tersebut. Berkenaan dengan tempoh kehilangan sokongan daripada seorang anak untuk ibu bapanya, Parlimen tidak menentukan dengan jelasnya bagaimana tempoh itu harus dikira. Oleh yang demikian, undang-undang berhubung dengan pengiraan tempoh kehilangan penyara kekal seperti sebelum pengenalan s 7(3)(iv)(d) terpinda Akta tersebut, iaitu, bahawa mahkamah haruslah memberi perhatian kepada kebarangkalian si anak berkahwin dalam menentukan multiplier yang terpakai (lihat ms 255I dan 256A–B); *Chan Ching Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 diikut.

Per curiam:

Keputusan dalam *Chan Ching Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 adalah konsisten dengan keputusan-keputusan dalam *Chang Chong Foo & Anor v Shivanathan* [1992] 2 MLJ 473 dan *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42 berkenaan dengan pengiraan tempoh kehilangan pendapatan, yang mana kedua-dua kes tersebut adalah berkaitan dengan tempoh kehilangan pendapatan di bawah s 28A(2)(c)(i) Akta tersebut. Namun demikian, kes-kes selepasnya adalah tidak relevan secara terus kepada isu di sini, iaitu pengiraan tempoh kehilangan penyara (lihat ms 256C).]

Notes

For a case on the appropriate multiplier in a claim for loss of support, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) para 283.

Cases referred to

Chan Ching Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233 (folld)
Chang Chong Foo & Anor v Shivanathan [1992] 2 MLJ 473 (refd)
Tan Kim Chuan & Anor v Chandu Nair [1991] 2 MLJ 42 (refd)

Legislation referred to

Civil Law Act 1956 ss 7(3)(iv)(c), (d), 28A(a)(c)(i)

Patwant Singh (*Ronald Khoo* and *Harjeet Singh* with him) (*PS Sohanpal*) for the appellants.

Thanajayan and *Mohd Khalil Tajuddin* (*Murali B Pillai & Associates*) for the respondents.

Abdul Wahab J: The appellants had undertaken this action for loss of support in respect of the deaths of their children Lien Choon Lai and his sister, Lien Kwee Bee in a road traffic accident. They were both aged 18 years at the time of the accident. Liability and damages have been agreed by the parties. The sole issue before this court is the question of the multiplier to be applied.

In the sessions court below, the issue had been extensively argued, at the end of which the learned judge — on the basis of being bound by the decision in *Chan Ching Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 (SC) — awarded a multiplier of eight and six years respectively. The learned judge took into account that daughters in Asian families tend to marry earlier and sons may delay marriage in order to help their families. The appellants have appealed.

The ground of appeal is that the appropriate years of purchase or multiplier should be 16 in accordance with s 7(3)(iv)(d) of the Civil Law Act 1956 ('the Act'). The cases counsel referred to are: *Chang Chong Foo & Anor v Shivanathan* [1992] 2 MLJ 473 (SC) and *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42 (SC).

Tan Kim Chuan is a case where the plaintiff-respondent was 12 years old when he was injured in a road accident. In the lower court, he was awarded RM67,200 as general damages for prospective loss of future earning. The (then) Supreme Court held that the Parliament meant exactly what it enacted in s 28A(2)(c)(i) of the Act:

> (i) that in the case of a plaintiff who has attained the age of fifty five years or above at the time when he was injured, no damages for such loss shall be awarded; and in any other case, damages for such loss shall not be awarded unless it is proved or admitted that the plaintiff was in good health but for the injury and was receiving earnings by his own labour or other gainful activity before he was injured; ... .

The Supreme Court, holding that it was abundantly clear that the legislature in enacting the section had decided that an injured person ought not to get any damages either for loss of future earnings or loss of earning capacity unless before or at the date of the accident he was in fact receiving earnings, allowed the appeal. In so holding, the Supreme Court said (at p 43):

> At the outset, we bear in mind, when a matter of statutory interpretation is involved, what Lord Hewart CJ said in *Spillers Ltd v Cardiff (Borough) Assessment Committee and Pritchard* [1931] 2 KB 21 at p 43:

> 'It ought to be the rule and we are glad to think it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broken, the burden of establishing their proposition lies heavily, and they can discharge it only by pointing something in the context which goes to show that the loose and inexact meaning is to be preferred.'

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And further down in the unanimous judgment, the Lord President said (at p 44):

> It is abundantly clear that the legislature, in its own wisdom, decided that an injured person ought not to get any damages in a claim either for loss of future earnings or loss of earning capacity unless before the accident (at the date of accident) he was in fact receiving earnings. To hold otherwise would mean that the court is creating law to provide for something which clearly the legislature has no intention to do. We feel that our legislature has enacted exhaustively and exclusively. The continued validity of the common law concept governing the future earnings of injured people in contrast to amended provisions in accident cases such as the present are inconsistent with each other and cannot co-exist.

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The point made is that where words of the legislature are clear, it is not for the court to amend it for whatever reason in the guise of interpretation.

Chang Chong Foo was an appeal to the Supreme Court involving s 28A(2)(c)(i) of the Act. Harun Hashim SCJ, delivering the judgment of the court, compared this section with s 7(3)(iv)(c) and concluded that the legislature intended that the same principle be applied in both cases — that is to say, in respect of a dependency claim for loss of earnings arising out of a fatal accident and in respect of a claim for loss of future earnings for personal injury. The plaintiff was 24 years old at the time of the accident, and working as a daily rated worker. He was unemployed ever since the accident. The learned judge of the High Court had awarded on the basis of a 16-year multiplier. The multiplier was upheld.

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Chang Chong Foo referred to *Tan Kim Chuan* with approval that the provisions of s 28A of the Act are exhaustive and mandatory.

It was argued that *Chan Chin Ming* was a majority decision before which relevant decisions such as *Chang Chong Foo* and *Tan Kim Chuan* had not been brought to the attention of and not argued before the court. It is interesting to know that Peh Swee Chin SCJ (now FCJ), who delivered the majority decision in *Chan Chin Ming*, had agreed with the decision of the court in *Chang Chong Foo*.

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Let us now turn to the decision in *Chan Chin Ming*. There, the plaintiff had claimed for loss of support as a result of a fatal accident involving her unmarried 25 year old son. Upon the question whether s 7(3)(iv)(d) of the Act was applicable, the Supreme Court reduced the multiplier to seven years. Section 7(3)(iv)(d) of the Act is as follows:

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> (3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for *any loss*

A *of support* suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):

Provided that —

...

(iv) in assessing the *loss of earnings* in respect of any period after the death of a person where *such earnings* provide for or contribute to the damages under this section the Court shall —

...

(d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2. (Emphasis added.)

Chan Chin Ming being a decision of the Supreme Court, the rule of *stare decisis* would apply. The decision would be binding on this court. If it conflicts with a previous decision of the court, the later case would to that extent overrule the earlier decision. But there is no rule that merely because the later case is a majority decision, it is 'less binding' than a unanimous decision. That distinction is applicable in a situation where an authority is only persuasive, and one is concerned with the degree of persuasiveness.

Nevertheless, the points argued are of some interest. Having considered the submissions, I find that the confusion lies in not taking careful note that two different concepts are contained in the section: loss of support and loss of earnings. This is the point alluded to in the majority decision in *Chan Chin Ming* (at p 243):

> The distinctiveness of the loss of support from the loss of earnings is worth emphasizing once more because it is an indisputable fact that the duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever so long as the duration of the loss of support sustained by a widow and her children in respect of her husband, for example.

In common law, the loss of earnings of the deceased has not been equated directly to loss of support, a loss suffered not by the deceased but by the parents. There is nothing in the Civil Law Act, however, to clearly suggest that the legislature intended that the two should be equated. This is borne out by the fact both terms are separately used in the Act. As can be seen above, whilst the main part of sub-s (3) is concerned with 'loss of support', para (iv) is concerned with the calculation of the 'loss of earnings' and sub-para (d) is concerned with the calculation of the number of years' purchase or multiplier used in the calculation of the loss of earnings.

The position may be summarized in direct and simple language as follows. The loss of earnings of the deceased is calculated as in s 7(3)(iv)(d). However, the period of loss of support from a child for his parents is not

necessarily as long as the period of his loss of earnings. The period of loss of support, however, cannot be longer than the period of loss of earnings. While the legislature has in s 7(3)(iv)(d) determined how the period of loss of earnings may be calculated, it has not done so so clearly with regard to loss of support. Parliament not having done so, then the law as to calculation of the period of loss of support remains as before the introduction of the section as amended, and the court would have to direct its mind to consider the likelihood of that child marrying in determining the multiplier to apply in a claim for loss of support.

The decision in *Chan Chin Ming* is consistent with *Chang Chong Foo* and *Tan Kim Chuan* with regard to the period of loss of earnings with which the type of loss the latter two cases are concerned under s 28A(2)(c)(i). In other words, those cases are not directly relevant to the issue at hand.

I would therefore dismiss this appeal with costs.

Appeal dismissed.

Reported by Lew Chee Seong